

<sup>3</sup>CAS index names are those used in the 9th Cumulative Index.

<sup>4</sup>Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

<sup>5</sup>This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

<sup>6</sup>This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

[70 FR 34582, June 14, 2005, as amended at 70 FR 44151, Aug. 1, 2005]

## **PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

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quality assessment to satisfy the requirements of § 265.93(d)(4) which is initiated prior to final closure of the facility must be completed and reported in accordance with § 265.93(d)(5).

(f) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(4), at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the ground-water monitoring system into compliance with this requirement.

[45 FR 33232, May 19, 1980, as amended at 50 FR 4514, Jan. 31, 1985; 71 FR 16909, Apr. 4, 2006]

### § 265.94 Recordkeeping and reporting.

(a) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(4), the owner or operator must:

(1) Keep records of the analyses required in § 265.92(c) and (d), the associated ground-water surface elevations required in § 265.92(e), and the evaluations required in § 265.93(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following ground-water monitoring information to the Regional Administrator:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in § 265.92(b)(1) for each ground-water monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in appendix III.

(ii) Annually: Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these param-

eters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1). During the active life of the facility, this information must be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: Results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(4), the owner or operator must:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of § 265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Regional Administrator a report containing the results of his or her ground-water quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This information must be submitted no later than March 1 following each calendar year.

[45 FR 33232, May 19, 1980, as amended at 48 FR 3982, Jan. 28, 1983; 50 FR 4514, Jan. 31, 1985]

## Subpart G—Closure and Post-Closure

SOURCE: 51 FR 16451, May 2, 1986, unless otherwise noted.

### § 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111 through 265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.116 through 265.120 (which concern post-closure care) apply to the owners and operators of:

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(1) All hazardous waste disposal facilities;

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in § 265.228 or § 265.258;

(3) Tank systems that are required under § 265.197 to meet requirements for landfills; and

(4) Containment buildings that are required under § 265.1102 to meet the requirement for landfills.

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of 40 CFR 270.1(c)(7) and are regulated under an enforceable document (as defined in 40 CFR 270.1(c)(7)).

(d) The Regional Administrator may replace all or part of the requirements of this subpart (and the unit-specific standards in § 265.111(c)) applying to a regulated unit (as defined in 40 CFR 264.90), with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document (as defined in 40 CFR 270.1(c)(7)), where the Regional Administrator determines that:

(1) A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release, and

(2) It is not necessary to apply the closure requirements of this subpart (and/or those referenced herein) because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of § 265.111 (a) and (b).

[51 FR 16451, May 2, 1986, as amended at 51 FR 25479, July 14, 1986; 53 FR 34086, Sept. 2, 1988; 57 FR 37267, Aug. 18, 1992; 63 FR 56734, Oct. 22, 1998; 71 FR 40274, July 14, 2006]

### § 265.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to pro-

tect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102.

[51 FR 16451, May 2, 1986, as amended at 57 FR 37267, Aug. 18, 1992; 71 FR 40275, July 14, 2006]

### § 265.112 Closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, or by six months after the effective date of the rule that first subjects a facility to provisions of this section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with § 265.115, a copy of the most current plan must be furnished to the Regional Administrator upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Agency who is duly designated by the Administrator.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 265.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 265.111. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting,

\* \* \* \*

[pages omitted]

management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 265.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 265.118.

[51 FR 16451, May 2, 1986, as amended at 71 FR 40275, July 14, 2006]

**§ 265.118 Post-closure plan; amendment of plan.**

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste

disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Regional Administrator within 90 days of the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of §§ 265.117 through 265.120.

(b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Regional Administrator upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator. After final closure has been certified, the person or office specified in § 265.118(c)(3) must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with subparts F, K, L, M, and N of this part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of subparts K, L, M, and N of this part; and

(ii) The function of the monitoring equipment in accordance with the requirements of subparts F, K, L, M, and N of this part; and

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(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(4) For facilities subject to § 265.121, provisions that satisfy the requirements of § 265.121(a)(1) and (3).

(5) For facilities where the Regional Administrator has applied alternative requirements at a regulated unit under §§ 265.90(f), 265.110(d), and/or 265.140(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(d) *Amendment of plan.* The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Regional Administrator to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Regional Administrator.

(1) The owner or operator must amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(iii) The owner or operator requests the Regional Administrator to apply alternative requirements to a regulated unit under §§ 265.90(f), 265.110(d), and/or 265.140(d).

(2) The owner or operator must amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

(3) An owner or operator with an approved post-closure plan must submit the modified plan to the Regional Administrator at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who

intended to remove all hazardous wastes at closure in accordance with § 265.228(b) or § 265.258(a) is required to close as a landfill in accordance with § 265.310, the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or Regional Administrator that the unit must be closed as a landfill. If the amendment to the post-closure plan is a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved according to the procedures in § 265.118(f).

(4) The Regional Administrator may request modifications to the plan under the conditions described in paragraph (d)(1) of this section. An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days of the request from the Regional Administrator. If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in § 270.42, the modifications to the post-closure plan will be approved in accordance with the procedures in § 265.118(f). If the Regional Administrator determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Regional Administrator within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he “expects to begin closure” of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must



submit the post-closure plan to the Regional Administrator no later than 15 days after:

(1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) Issuance of a judicial decree or final orders under section 3008 of RCRA to cease receiving wastes or close.

(f) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved post-closure plan. The Regional Administrator must ensure that the approved post-closure plan is consistent with §§ 265.117 through 265.120. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the

Regional Administrator to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or ground-water monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Regional Administrator only when they present new and relevant information not previously considered by the Regional Administrator. Whenever the Regional Administrator is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, he will issue a final determination, based upon the criteria set forth in paragraph (g)(1) of this section.

(iii) If the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in paragraph (g)(1)(ii) of this section. After considering the comments, he will issue a final determination.

(ii) The Regional Administrator will base his final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Regional Administrator would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

[51 FR 16451, May 2, 1986, as amended at 53 FR 37935, Sept. 28, 1988; 63 FR 56734, Oct. 22, 1998]

#### § 265.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, loca-

tion and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR part 265, subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by §§ 265.116 and 265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification signed by the owner or operator that he has recorded the notation specified in paragraph (b)(1) of this section and a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 265.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this chapter. If the owner or operator is granted approval to conduct the removal activities, the owner or operator

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may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

[51 FR 16451, May 2, 1986, as amended at 71 FR 40275, July 14, 2006]

## § 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

[71 FR 16909, Apr. 4, 2006]

## § 265.121 Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.

(a) Owners and operators who are subject to the requirement to obtain a post-closure permit under 40 CFR 270.1(c), but who obtain enforceable documents in lieu of post-closure permits, as provided under 40 CFR 270.1(c)(7), must comply with the following requirements:

(1) The requirements to submit information about the facility in 40 CFR 270.28;

(2) The requirements for facility-wide corrective action in § 264.101 of this chapter;

(3) The requirements of 40 CFR 264.91 through 264.100.

(b)(1) The Regional Administrator, in issuing enforceable documents under § 265.121 in lieu of permits, will assure a

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meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

(i) When the Agency becomes involved in a remediation at the facility as a regulatory or enforcement matter;

(ii) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and

(iii) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Regional Administrator may consider that the facility has met the requirements of 40 CFR 270.1(c)(7), unless the facility qualifies for a modification to these public involvement procedures under paragraph (b)(2) or (3) of this section.

(2) If the Regional Administrator determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Regional Administrator may delay compliance with the requirements of paragraph (b)(1) of this section and implement the remedy immediately. However, the Regional Administrator must assure involvement of the public at the earliest opportunity, and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

(3) The Regional Administrator may allow a remediation initiated prior to October 22, 1998 to substitute for corrective action required under a post-closure permit even if the public involvement requirements of paragraph (b)(1) of this section have not been met so long as the Regional Administrator assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

[63 FR 56734, Oct. 22, 1998]

## Subpart H—Financial Requirements

SOURCE: 47 FR 15064, Apr. 7, 1982, unless otherwise noted.